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IN THE

Supreme Court of the United States

October Term, 1956

No. 520

SIGNAL-STAT CORPORATION,
Petitioner,

v.

LOCAL 475, UNITED ELECTRICAL RADIO AND MACHINE WORKERS OF AMERICA (UE),
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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LOCAL 475, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE),

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioner, Signal-Stat Corporation, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals, for the Second Circuit, entered in the above entitled cause on July 2, 1956.

Opinions Below

The opinion of the District Court, which has not been reported, is printed in Appendix B hereto, pp. 15-17, *infra*. The opinion of the United States Court of Appeals for the Second Circuit, printed in Appendix B hereto, pp. 18-27, *infra*, is reported at 235 F. 2d, 298.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on July 2, 1956 (App. B, p. 28, *infra*). A timely petition for rehearing was filed by the petitioner on July 17, 1956, but was denied by the Circuit Court of Appeals on July 23, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254.

Questions Presented

1. Whether an action to recover damages resulting from a strike in violation of a no-strike clause contained in a collective bargaining agreement may be stayed, pursuant to Section 3 of the United States Arbitration Act, pending arbitration, where the employees involved are engaged in the production of goods for commerce and not directly in commerce.

2. Whether a strike called by a union in violation of a no-strike clause of a collective bargaining agreement constitutes a default or waiver, within the meaning of Section 3 of the United States Arbitration Act, of a right to demand arbitration.

3. Whether the right and remedy created by Section 301 of the Labor Management Relations Act for violation of a collective bargaining agreement is exclusive so that an action under Section 301 may not be stayed notwithstanding the arbitration provisions of the collective labor agreement.

4. Whether a strike in violation of a no-strike clause is a dispute referable to arbitration in the absence of any provision in the collective bargaining agreement which expressly so provides.

Statutes Involved

The statutory provisions involved are Sections 1 through 3, inclusive, of the United States Arbitration Act, 61 Stat. 669, 9 U. S. C. Sections 1 through 3, inclusive, and Section 301 of the Labor Management Relations Act, as amended, 61 Stat. 156, 28 U. S. C. 185. These are set forth in Appendix A, pp. 13-14, *infra.*

Statement

Petitioner, a New York corporation, manufactures signal devices and sells them in interstate commerce. Respondent labor union is the collective bargaining representative of the Petitioner's production employees. The Petitioner and the Respondent are parties to a collective labor agreement which prescribes the terms and conditions of employment of the Petitioner's employees.[1]

On or about October 18, 1955, the Petitioner discharged two employees. The following day, the Respondent enforced a strike and sit-down at the Petitioner's plant (R. App. 10a) notwithstanding that Petitioner's right to initiate a discharge is plainly provided for in the collective bargaining agreement (R. App. 10a and Par. 13 of Ex.).

The Petitioner thereupon instituted an action, pursuant to the provisions of Section 301 of the Labor Management Relations Act (28 U. S. C. 185) in the United States District Court for the Eastern District of New York. Petitioner's complaint alleged, in substance, that the strike and sit-down constituted a breach of the collective bargaining agreement (Par. 17 of Ex).

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[1] A copy of the collective bargaining agreement was filed at the time of oral argument before the Circuit Court. Copies have been filed in this Court, together with the record and will be referred to as "Ex."

The Respondent then moved, pursuant to Section 3 of the United States Arbitration Act (R. App. 5a) to stay the action, pending arbitration.

The District Court (Abruzzo, J.) denied the Respondent's motion (App. B, pp. 15-17, *infra*). The Court of Appeals for the Second Circuit reversed the judgment of the District Court, holding that a collective labor agreement is a contract of employment within the meaning of Section 1 of the United States Arbitration Act, but that the exclusionary language of Section 1 applied only to employees engaged in commerce and not to those, like Petitioner's employees, who are engaged in the production of goods for commerce. The Court of Appeals then decided that the claimed violation of the no-strike clause was referable to arbitration and that the action may be stayed under Section 3 of the United States Arbitration Act.

Reasons for Granting the Writ

1. This case involves the threshold issue as to whether the exclusionary language of Section 1 of the United States Arbitration Act is applicable only to collective bargaining agreements covering employees engaged directly in interstate commerce.

Decisions by the several Circuit Courts of Appeals on this important matter of federal law are utterly irreconcilable. Indeed, this is clearly recognized by the Court below (App. B, pp. 24-25).

Among those Courts which hold that a collective bargaining agreement is a contract of employment within the meaning of Section 1 of the Arbitration Act, some have restricted the exclusion to employees directly engaged in commerce, while others hold that the language is applicable, as well, to employees engaged in the production of goods for commerce.

In the instant case, the Court of Appeals for the Second Circuit concluded, as did the Court of Appeals for the Third Circuit (*Tenney Engineering, Inc.* v. *United Electrical, Radio and Machine Workers of America (UE), Local 437*, 207 F. 2d, 450 (CA 3)), that the exclusion applies only to collective bargaining agreements covering employees engaged directly in interstate commerce.

The Courts of Appeals for the Fourth, Fifth and Tenth Circuits, have reached diametrically opposite conclusions. (*Lincoln Mills of Alabama* v. *Textile Workers of America, CIO*, 230 F. 2d 81 (CA 5); *United Electrical, Radio and Machine Workers of America et al.* v. *Miller Metal Products, Inc.*, 215 F. 2d 221 (CA 4); *Mercury Oil Refining Co.* v. *Oil Workers International Union et al.*, 187 F. 2d 980 (CA 10).)

Petitioner contends that the exclusionary language of Section 1 applies irrespective of the nature of the employees' activities involving interstate commerce. Any other conclusion offends reason and leads to incongruous results. Thus, a single collective bargaining agreement may cover truck drivers, warehousemen and mechanics of one employer. In such a case, a restrictive reading of the exclusionary language of Section 1 means that the truck drivers would be excluded from the Arbitration Act, whereas the mechanics and warehousemen of the same employer would fall within the ambit of the Arbitration Act.

Further, the definition of the term "commerce" in Section 1 suggests, in its broadest sense "any commerce • • • producing goods for commerce, or • • • engaging in activity that affects commerce within the meaning of our decisions." *Bernhardt* v. *Polygraphic Company of America, Inc.*, 350 U. S. 198, 201.

Now, if Section 1 is meaningful, the exclusion must be read as follows:

> "nothing herein shall apply to contracts of employment of • • • workers engaged in • • • interstate

> commerce," i.e., directly in commerce "producing goods for commerce, or * * * engaging in activity that affects commerce within the meaning" of decisions by this Court.

The scope of the exlusionary language of Section 1 of the Arbitration Act was not defined by this Court in *Bernhardt* v. *Polygraphic, supra,* p. 202, although the integrated nature of Sections 1, 2 and 3 of the Act was made plain by the decision in that case.

Resolution of the conflict of decisions is urgently required in the interests of sound and stable contemporary labor relations and the effective administration, by the courts, of a growing body of labor law litigation which centers about the United States Arbitration Act.

According to the Bureau of National Affairs, approximately 96% of all collective bargaining agreements recently surveyed contain arbitration provisions and approximately 89% contain a no-strike, no lockout clause. "Collective Bargaining Negotiations and Contracts," pp. 51:1, 77:1.

An increasing number of actions which involve the scope of a no-strike clause and the application of arbitration provisions are being instituted in the federal courts. This has led to a seemingly irrational disparity of views by judges of the District Courts, confusion concerning the applicability of the United States Arbitration Act and uncertainty in the administration of labor contracts. Conflicting decisions by Courts of Appeals have added to the sense of uncertainty which characterizes this vital area of labor law.

Unless and until the content of the exclusionary language of Section 1 is defined, the conflict of decisions in the lower Federal Courts and Courts of Appeals will continue unabated. A decision is required by this honorable Court in order to settle this important issue and produce that

measure of decisional uniformity which is essential to a coherent body of labor law.

A collateral, but important issue, involved in this case is posed by the conflict of decisions among the Courts of Appeals concerning the status of a collective bargaining agreement as a contract of employment within the meaning of Section 1 of the United States Arbitration Act. The Courts of Appeals for the Second, Fourth, Fifth and Tenth Circuits have held that a collective bargaining agreement is a contract of employment. *Signal-Stat. Corporation* v. *Local 475*, 235 Fed. 2nd 298, the decision by the Court below (CA 2); *Lincoln Mills of Alabama* v. *Textile Workers, etc., supra; United Electrical, etc.* v. *Miller Metal Products, Inc., supra; Mercury Oil Refining Co.* v. *Oil Workers, etc., supra.* Contrary conclusions have been reached by the Courts of Appeals of the First and Sixth Circuits. *Local 205, United Electrical, Radio and Machine Workers, etc.* v. *General Electric Company*, 233 F. 2d 85 (CA 1); *Hoover Motor Express Co. Inc.* v. *Teamsters, etc.*, 217 F. 2d 49 (CA 6). There is, moreover, irreconcilable conflict among the federal district courts.

Irrespective of whether a collective labor agreement is a contract of employment within the meaning of Section 1 of the Arbitration Act, it is clear that the Act was never intended to provide a scheme of labor arbitration. An analysis of the legislative history, a review of the statutory precedents, the published statements of the American Bar Association and the Department of Commerce and the social and economic framework of the legislation demonstrate a Congressional intention to restrict the United States Arbitration Act exclusively to commercial transactions and to exclude any contracts relating to labor matters. The exemption of "contracts of employment" is consistent with this view since such a contract is a species of a commercial agreement.

Seamen were excluded because of objections urged by the Seamen's Union which feared that seamen's wages, the very core of a collective bargaining agreement, came within admiralty jurisdiction and might be deemed embraced within the concept of a maritime transaction and thereby made subject to arbitration. 58 Am. Bar Assn. Rep. 287 (1923). The comments made by the sponsors of the legislation on the floor of Congress prove conclusively that the Arbitration Act was designed solely for commercial disputes. 68th Cong. Record, 1st Sess., pp. 1931, 11080; 2nd Sess., pp. 984, 3004. S. Rep. No. 536 and H. Rep. No. 96, 68th Cong., 1st Sess. (1924).

The United States Arbitration Act can be accorded a logical and coherent construction only if all collective bargaining agreements, whether covering employees engaged in interstate commerce or engaged in the production of goods for interstate commerce, are excluded from its reach.

If this Court decides that the United States Arbitration Act does not apply to labor arbitration, the basic source of conflict among the Courts of Appeals will have been finally removed. Uniformity of decision will then be promoted.

2. Petitioner contends that resort by a union to a strike or an employer to a lockout in violation of a no-strike—no lockout clause, constitutes a waiver of a right to arbitration within the meaning of Section 3 of the United States Arbitration Act. This Court has recognized that violation of a no-strike clause constitutes an abandonment of rights under the National Labor Relations Act and is not embraced within the concept of protected concerted activities. *National Labor Relations Board* v. *Sands Manufacturing Company,* 306 U. S. 332.

It is anomalous to suggest that important statutory rights under the National Labor Relations Act are waived by a strike in violation of the no-strike clause and to hold,

to the contrary, that the right to arbitration under the United States Arbitration Act is preserved, notwithstanding the same proscribed conduct.

There is a conflict of decisions among the Courts of Appeals as to whether or not a strike in violation of a no-strike clause constitutes a waiver of a right to arbitration.

The Court of Appeals for the Second Circuit in this case failed to recognize that a strike in violation of a no-strike clause is a waiver of the right to arbitrate within the meaning of Section 3 of the Arbitration Act.

The decision by the Court of Appeals in the case at bar is in conflict with the decisions by the Courts of Appeals for the Third and Seventh Circuits. *Philadelphia Dress Joint Board, etc.* v. *Rosinsky, etc.*, 134 F. Supp. 607 (D. C. E. D. of Pa.), aff'd 229 F. 2d 438 (CA 3); *Cuneo Dress, Inc.* v. *Kokomo Paper Handlers Union, etc.*, 235 F. 2d 108 (CA 7).

A no-strike clause is intended to assure peace during the life of a labor agreement. An arbitration clause, theoretically, guarantees that disputes will be decided in an orderly manner without the pressures of a strike or lockout. If a union or an employer strikes or locks out whenever a dispute arises in order to enforce a unilateral decision, then the arbitration machinery becomes meaningless. The dispute which gives rise to the strike or lockout is no longer the subject matter of peaceful composition, but an excuse for reliance upon economic force.

The whole trend of modern labor law is to preserve the sanctity of the collective labor agreement. If a union may strike and thereafter submits to arbitration its right to strike, the arbitration machinery becomes a self-defeating mechanism.

Considering the importance of the no-strike clause and its relation to labor (peace) and stability, it is important

that this Court determine whether arbitration is available under the Arbitration Act when a union calls and enforces a strike in violation of a no-strike clause.

3. The precise status of the right created by Section 301 has not been definitively described by this Court. *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corporation*, 348 U. S. 437. There is, too, a conflict of decisions among the Courts of Appeals and the District Courts as to whether Section 301 creates a federal substantive right or merely a remedy and a forum in which to enforce that remedy.

If Section 301 creates a federal substantive right, then the remedy of specific performance for a breach of an agreement to arbitrate may be available to the plaintiff. This, however, is not the case at bar. Here the Petitioner seeks to recover damages for breach of contract and the question, therefore, is whether plaintiff's election of its remedy to recover damages under Section 301 may be frustrated by the defendant's resort to the United States Arbitration Act. Cf. *Wilko* v. *Swan*, 346 U. S. 427.

The interrelationship between Section 301 and the United States Arbitration Act, where the petitioner is the party seeking a decree of specific performance to compel arbitration, is now the subject of consideration by this Court. The question which is not reached by the cases thus far decided by this Court or the cases now pending before it is whether a defendant may, relying upon the United States Arbitration Act, frustrate a suit instituted under Section 301 of the Labor Management Relations Act.

4. The decision of the Court below is in conflict with the decision of another panel of the Second Circuit which decided *Markel Electric Products, Inc.* v. *United Electrical Radio & Machine Workers of America, U.E., et al.*, 202 F. 2d 435 (CA 2).[2] In the latter case, the Court held that a

[2] See, too: *Shirley-Herman Co. Inc.* v. *International Hod Carriers, etc.*, 182 F. 2d 806 (CA 2).

strike in violation of a no-strike clause was not a matter which was referable to arbitration. The Court's attempted distinction of the *Markel* case by stressing the difference between the word "any" [3] and the word "all" [4] is factitious (App. B, pp. 22-23). The structures of the collective bargaining agreement in the instant case and the collective bargaining agreement in the *Markel* case are identical. In both cases, it is evident that the parties, at no time, intended to submit a strike in violation of a no-strike clause to arbitration.

The decision by the Court below is in conflict with the *Markel* case,[5] and with the decisions of the other circuits. The weight of authority holds that a strike in violation of a no-strike clause is not an issue which is referable to arbitration. *Hoover Motor Express Co. Inc.* v. *Teamsters, Chauffeurs, Helpers and Taxicab Drivers, Local No. 327, etc.*, 217 F. 2d 49 (CA 6); *Metal Polishers, Buffers, Platers & Helpers International Union, Local 90, A. F. of L.* v. *Rubin, et al.*, 85 F. Supp. 363 (E. D. Pa.); *Square D Co.* v. *United Electrical, Radio and Machine Workers, et al.*, 123 F. Supp. 776 (E. D. Mich.); *United Electrical Radio & Machine Workers of America, et al.* v. *Miller Metal Products, Inc.*, 215 F. 2d 221 (CA 4); *The Bassick Co.* v. *Bassick Local 229, etc.*, 126 F. Supp. 776 (D. C. Conn.).

This is not an insignificant issue involving mere construction of a particular contract. There are literally thousands of collective bargaining agreements which employ the words "any" or "all" interchangeably in describ-

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[3] "In the event that the two parties to this agreement fail to make a satisfactory adjustment of any dispute. * * *." Arbitration clause in *Markel* case, p. 436.

[4] "All disputes, grievances or differences that may arise between the parties. * * *." Arbitration clause in the instant case (Ex. Par. 18).

[5] Where important issues are involved, certiorari will be granted to resolve intra-circuit conflicts. *Maggio* v. *Zeitz*, 333 U. S. 56; *John Hancock Mutual Life Insurance Company* v. *Bartels*, 308 U. S. 180.

ing disputes which are referable to arbitration. To compel the parties to arbitrate while a strike is in effect, renders the no-strike clause meaningless, ineffectual and illusory. Thousands of employers and hundreds of unions rely, for their day to day business, upon the sanctity of the no-strike no lockout clause. If a strike or lockout in violation of an inhibitory clause creates a right to arbitrate, then arbitration, which is intended to prevent strikes and lockouts, does in fact insulate prohibited activity against legal redress.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

HERBERT BURSTEIN,
Counsel for Petitioner.

Dated, October 19, 1956.

APPENDIX A

I. *United States Arbitration Act:*

"Sec. 1. 'Maritime transactions' and 'commerce' defined; exceptions to operation of title.

'Maritime transactions', as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; 'commerce', as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."

"Sec. 2. Validity, irrevocability, and enforcement of agreements to arbitrate.

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."

"Sec. 3. Stay of proceedings where issue therein referable to arbitration.

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration."

II. *Labor Management Relations Act, As Amended:*

"Sec. 301. Suits by and against labor organizations—Venue, amount, and citizenship.

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

APPENDIX B

Opinion of District Court

January 26, 1956

ABRUZZO, J.:

The plaintiff, a manufacturing corporation, instituted this action under Section 301 of the Labor Management Relations Act, 29 U. S. C. A. 185, to recover damages against the defendant, a labor union, for breach of contract. The breach alleged is that the defendant called, ordered and enforced a strike and a sitdown of all of the plaintiff's production workers under the order of the defendant union. This, it is claimed, was in violation of a no-strike clause in a collective bargaining agreement between the parties which agreement is the crux of this motion.

The answer has not as yet been interposed and the defendant moves for a stay of the trial of the action, claiming that under the collective bargaining agreement the defendant is entitled to arbitration pursuant to Section 3 of Title 9, U. S. C. A.

The facts out of which this dispute arises are substantially as follows: On October 18, 1955, after due notice to the union, the plaintiff discharged two employees It appears that in paragraph 13 of the collective bargaining agreement the plaintiff reserved the right to discharge employees for just cause, but the union was granted the privilege of challenging the discharge through the grievance procedure and arbitration in paragraph 18.

The affidavits before the Court are conflicting, to say the least. The plaintiff contends that it offers to submit the dispute concerning the discharge pursuant to the grievance and arbitration clause in the collective bargaining agreement. The plaintiff further claims that instead of exercising its rights under paragraph 18 the union pro-

ceeded to call and enforce a strike and sitdown of its employees in order to force the plaintiff to re-employ the discharged employees. Pickets thereafter appeared with lockout signs. In the New York Supreme Court the plaintiff applied for a temporary restraining order enjoining the defendant from picketing. In the state court it was agreed by the plaintiff that it would restore to work all of the employees except the two discharged and proceed to arbitration with respect to the discharged employees. This proposal was accepted by the defendant and the rest of the employees returned to work.

The Court gathers from the affidavits submitted that there was an attempt to arbitrate by representatives of the plaintiff and the defendant union. It further appears in these affidavits that proceedings for arbitration broke down. The plaintiff blames the defendant for the breakdown; the defendant blames the plaintiff. Plaintiff contends that during the conferences the union representatives walked out without just cause and the defendant claims that just the opposite happened, that the plaintiff's representatives refused to arbitrate and walked out. None of the affidavits filed by both sides gives very much information in detail as to exactly what happened.

Paragraph 18 of the collective bargaining agreement between the parties provides the grievance procedure. That paragraph reads as follows:

> "18. Grievance Procedure. If no satisfactory settlement is arrived at, within ten (10) days from the date of filing of said grievance, then the difference, dispute or grievance shall at the request of either party, be immediately submitted for arbitration. Failure to submit such issue within said ten (10) days shall be construed as a final determination of said grievance. The arbitrator shall be appointed by the New York State Board of Mediation at the request of either party, and the parties

hereto agree to be bound by the award rendered by said arbitrator.

The party seeking arbitration hereunder, shall serve notice in writing upon the other party, setting forth his grievance, and shall file a copy of said notice with the New York State Board of Mediation. * * * "

The information contained in the affidavits before the court, meager though they be, does not show whether the notice for arbitration was mailed by either party to the State Board of Mediation, except that the affidavits show that no satisfactory agreement was arrived at by the parties. Presumably at that point (the disagreement as to arbitration) the matter should have been referred to the New York State Board of Mediation. Section 3 of Title 9, U. S. C. A. makes provision that where an action is pending and the issue involved is referable to arbitration, under the agreement in question the trial shall be stayed until such arbitration has been had in accordance with the terms of the agreement, provided, the applicant for a stay is not in default in proceeding with such arbitration. Neither side has referred to the latter sentence or to what effect it has in the present action.

As to the legal right of the parties, the plaintiff cites a case in the Circuit Court of Appeals for the Fourth Circuit, *International Union* v. *Colonial Hardwood Floor Co.*, 168 F. 2d 33, as determinative of the right to institute this suit. The defendant cites *Evans* v. *Hudson Coal Co.*, 165 F. 2d 970 (C. A. 3d), as equally determinative that if the issues presented are referable to arbitration, a stay must be granted. In view of the facts before the Court neither of these cases can be said to be exactly in point.

The stay cannot be granted. The motion is, therefore, denied.

ABRUZZO,
U. S. D. J.

Opinion of United States Court of Appeals

FOR THE SECOND CIRCUIT

No. 341—October Term, 1955.

(Argued May 9, 1956 Decided July 2, 1956.)

Docket No. 24039

SIGNAL-STAT CORPORATION,

Plaintiff-Respondent,

—v.—

LOCAL 475, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE),

Defendant-Appellant.

Before:

CLARK, *Chief Judge* and
FRANK and HINCKS, *Circuit Judges.*

Appeal from an order, of the United States District Court for the Eastern District of New York, entered by Judge Abruzzo, denying a motion to stay the action pending arbitration. Reversed.

ZELBY & BURSTEIN
Attorneys for Plaintiff-Respondent

HERBERT BURSTEIN, *of Counsel*
MILDRED ROTH
Attorney for Defendant-Appellant

The plaintiff, Signal-Stat Corp., is a corporation engaged in the manufacture of automotive electrical equipment. A dispute arose between the plaintiff and the defendant, Local 475, concerning the discharge of two employees. The plaintiff's employees went on strike until it was eventually agreed that all employees, except the two discharged by the company, would return to work and the dispute over the discharged employees would be settled by arbitration. The plaintiff then instituted this action against the defendant union for damages under Section 301 of the Labor Management Relations Act of 1947 (29 U. S. C. Section 185), alleging that the union had called, ordered and enforced a strike and sitdown of production employees. This was alleged to be a violation of the no-strike clause in the collective bargaining agreement between Signal-Stat and the Union. There was no diversity of citizenship.

Without answering the complaint, the defendant Union moved for a stay of the action, claiming that, under the collective bargaining agreement, it was entitled to arbitration of the dispute. The pertinent parts of the agreement are as follows:

"17. Strikes and Lockouts

"During the term of this agreement there shall be no strikes, stoppages or lockouts for any cause

or reason whatsoever, but work shall proceed and continue without interruption pending settlement through the grievance procedure and/or arbitration as hereinafter provided.

"18. Grievance Procedure

"All disputes, grievances or differences that may arise between the parties of this agreement shall promptly be filed in writing with the Employer or the Union as the case may be, and shall promptly be taken up for adjustment between the aggrieved employee and the Shop Committee on the one hand, and the Employer on the other. In the event that they are unable to agree, the matter shall then be taken up between a representative of the Union, the Shop Committee and the Employer for adjustment. If no satisfactory settlement is arrived at, within ten (10) days from the date of the filing said grievance, then the difference, dispute or grievance shall at the request of either party, be immediately submitted for arbitration. Failure to submit such issue within said ten (10) days shall be construed as a final determination of said grievance. The arbitrator shall be appointed by the New York State Board of Mediation at the request of either party, and the parties hereto agree to be bound by the award rendered by said arbitrator."

The district judge entered an order denying the motion for a stay. The Union appeals, asserting that it is entitled to a stay under Section 3 of the United States Arbitration

Act (9 U. S. C. Section 3),[1] or under Section 301 (a) of the Taft-Hartley Act.[2]

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[1] The U. S. Arbitration Act reads, in part:

Section 1. "* * * 'commerce,' as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."

Section 2. "A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."

Section 3. "If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration."

[2] "Section 301 (a). Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." (29 U. S. C. Section 185 (a).)

FRANK, *C.J.*:

1. An initial question is whether the district court has jurisdiction over the plaintiff's action for damages under Section 301 (a) of the Taft-Hartley Act. This is not the type of action, involving the "uniquely personal right of an employee," which, according to *Westinghouse Salaried Employees* v. *Westinghouse Corp.*, 348 U. S. 437, was not intended by Congress to be brought under Section 301. The Court in *Westinghouse* did not, therefore, reach or decide the constitutional-jurisdictional question raised by Section 301. Hence, we adhere to our decision in *Shirley-Herman Co.* v. *International Hod Carriers*, 182 F. 2d 806 (C. A. 2), where we held that Section 301 created a federal substantive right and federal jurisdiction to enforce it. See, also, *Rock Drilling, Blasting, Etc.* v. *Mason & Hanger Co.*, 217 F. 2d 687, 691 (C. A. 2). Other courts, since *Westinghouse*, have reached a similar result. See *Lincoln Mills of Alabama* v. *Textile Workers Union*, 230 F. 2d 81, 87-88 (C. A. 5); *United Electric, R & M Workers* v. *General Electric*, 38 L. R. R. M. 2019, 2030 (C. A. 1).

2. The order of the district court is appealable. *Shanferoke Corp.* v. *Westchester Corp.*, 293 U. S. 449. The fact that, here, the action "at law" for damages is to enforce a statutory rather than a common law right is immaterial. *Wilko* v. *Swan*, 201 F. 2d 439, 441 (C. A. 2), reversed on other grounds, 346 U. S. 427; *Markel Electric Products* v. *United Electric R & M Workers*, 202 F. 2d 435, 437 (C. A. 2); cf. *Baltimore Contractors* v. *Bodinger*, 348 U. S. 176, 179-180.

3. We think the broad arbitration clause in the collective bargaining agreement here involved covers a dispute relating to an alleged breach of the no-strike clause. Under the agreement, "*All* disputes, grievances or differences" are arbitrable. We can hardly imagine more broadly inclusive language. This phraseology distinguishes the

instant case from *Markel Electric Products* v. *United Electric, E & R Workers, supra.* To the extent that the other cases cited by plaintiff require a contrary result, we think them erroneous.[3] We think their interpretations of similar arbitration clauses are unduly restrictive and achieve, by indirection, the same result as the old, and now generally rejected, judicial aversion to enforcing arbitration agreements. Cf. *Kulukundis Shipping Co.* v. *Amtorg Trading Co.*, 126 F. 2d 978, 983-85 (C. A. 2). Other cases, with which we agree, support our decision that the instant arbitration agreement covers a dispute arising from an alleged breach of the no-strike clause. See, e.g., *Lewittes & Sons* v. *United Furniture Workers of America, CIO,* 95 F. Supp. 851, 853-54 (S. D. N. Y.); *Penn. Greyhound Lines* v. *Amalgamated Ass'n,* 98 F. Supp. 789, 791, reversed on other grounds, 193 F. 2d 327 (C. A. 3); *Hudson Wholesale Grocery Co.* v. *Allied Trades Comm.*, 65 A. 2d 557, 559 (N. J. Ch.).

The plaintiff itself apparently construed the grievance-arbitration provision to include this dispute, since it instituted a grievance pursuant to the provisions of Paragraph 18 of the agreement with respect to "the matter of the quitting of employment by the members of the union, with the knowledge, consent and direction of the union."

4. There remains the question whether the Union is entitled to a stay of the action pending arbitration under Section 3 of the United States Arbitration Act or under Section 301 of the Taft-Hartley Act. Since we decide that Section 3 of the Arbitration Act is applicable to this agreement and authorizes a stay of the proceedings, we do not reach, and need not decide, whether the arbitration agree-

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[3] *United Electric R & M Workers* v. *Miller Metal Products,* 215 F. 2d 221 (C. A. 4); *International Union* v. *Colonial Hardwood Floor Co.*, 168 F. 2d 33, 35 (C. A. 4); *Square D Co.* v. *United Electric R & M Workers,* 123 F. Supp. 776.

ment is enforceable under Section 301 of the Taft-Hartley Act, as some courts have held.[4]

The Supreme Court, in strong dictum, has recently stated Section 3 of the Arbitration Act is limited by Sections 1 and 2; *Bernhardt* v. *Polygraphic Co.*, 350 U. S. 198, 201-202. We think the collective bargaining agreement in this case is a "contract evidencing a transaction involving commerce" within the meaning of Section 2 of the Act.[5] We also think that the last clause in Section 1 of the Act, which excludes certain contracts from the Act, is not applicable to this agreement. That clause provides that "nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."

The Supreme Court has not yet interpreted the exclusionary clause in Section 1, and the decisions of the lower federal courts are in irreconcilable conflict. The decisions of the various circuits are discussed and reviewed in *Lincoln Mills of Alabama* v. *Textile Workers Union*, 230 F. 2d 81, 85-86 (C. A. 5) and in *United Electric, R & M Workers* v.

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[4] See, e.g., *Textile Workers Union* v. *American Thread*, 113 F. Supp. 137 (D. Mass.); *Wilson Bros.* v. *Textile Workers Union*, 132 F. Supp. 163, 165 (S. D. N. Y.); *The Evening Star Newspaper Co.* v. *Columbia Typo. Union*, 124 F. Supp. 322, 323 (D. C. D. C.); *Local 207, Etc.* v. *Landers, Frdry & Clark*, 119 F. Supp. 877, 879 (D. C. Conn.); contra, *Lincoln Mil's of Ala.* v. *Textile Workers Union*, 230 F. 2d 81, 87-88 (C. A. 5); *United Electric, R & M Workers* v. *General Electric Corp.*, 38 L. R. R. M. 2019, 2027 (C. A. 1).

[5] See *Bernhardt* v. *Polygraphic Co.*, 350 U. S. 198, 200-201; *United Electric R & M Workers* v. *General Electric Corp.*, 38 L. R. R. M. 2019, 2027-28 (C. A. 1); Sturges & Murphy, Some Confusing Matters Relating to Arbitration Under the United States Arbitration Act, 17 Law and Contem. Probs. 580, 617-19 (1952); Cox, Grievance Arbitration in the Federal Courts, 67 Harv. L. Rev. 591, 598-599 (1954).

General Electric, 38 L. R. R. M. 2019, 2029 (C. A. 1). We will not repeat their labor here. Suffice it to say that the First, Fourth, and perhaps the Tenth Circuits would hold that the instant agreement comes within the exclusionary clause in Section 1 and, hence, that the Arbitration Act is inapplicable. The Third, Fifth and Sixth Circuits would hold that the agreement does not come within the exclusionary language of Section 1, and that therefore Section 3 of the Act, authorizing a stay of the action, is applicable. Those cases which so hold do so either on the ground that a collective bargaining agreement is not a "contract of employment," within the meaning of that language in Section 1,[6] or—as the Third Circuit has held in *Tenney Engineering Inc.* v. *United Electric, R & M Workers*, 207 F. 2d 450, 452-53 (C. A. 3)—because, even assuming a collective bargaining agreement is a "contract of employment"—the exclusionary clause in Section 1 applies only to "workers engaged in * * * interstate commerce," *i.e.*, only those actually in the transportation industries.

The legislative history of the exclusionary clause in Section 1 is, at best, vague and inconclusive. The language apparently was inserted at the request of the Seamen's Union, which felt that disputes involving the contracts of seamen came within the admiralty jurisdiction and should not be subject to arbitration. It is likely that the Union was concerned, at least in part, with its own collective bargaining agreements. Thus, to hold that such agreements are not "contracts of employment," and hence not within the exclusionary language in Section 1, would tend to defeat what little congressional intent can be discerned concerning that language. We incline to agree with the decision and reasoning of the Third Circuit in the *Tenney* case. This conclusion is consonant with our decisions.

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[6] The cases which so hold rely primarily on language in *J. I. Case* v. *N. L. R. B.*, 321 U. S. 332, 334-36, a case not involving an interpretation of the Arbitration Act at all.

Although this court has never passed on the precise issue here involved, we did, in *Shirley-Herman Co.* v. *International Hod Carriers*, 182 F. 2d 806, 809 (C. A. 2), impliedly hold that a collective bargaining agreement constituted a "contract of employment"; and in *Bernhardt* v. *Polygraphic Co. of America*, 218 F. 2d 948, 951-52 (C. A. 2), reversed on other grounds, 350 U. S. 198, we gave a restrictive interpretation to the term, "workers" as used in the exclusionary clause in Section 1.

In view of the present, almost universal, approval of arbitration as a means for settling labor disputes,[7] including the express approval of Congress,[8] we think the courts should interpret the United States Arbitration Act so as to further, rather than impede, arbitration in this area. We think the interpretation of the Third Circuit in *Tenney* accords both with the modern trend and with what we deem to be the intention of Congress.

The plaintiff's employees are not "engaged in * * * commerce," that is, they are not actually engaged in interstate and foreign commerce. They are merely engaged in the manufacture of goods for interstate commerce. Therefore, the collective bargaining agreement here does not come within the exclusionary clause of Section 1.

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[7] *United Office and Professional Workers, CIO* v. *Monumental Life Ins. Co.*, 88 F. Supp. 602, 607 (E. D. Pa.); *Markel Electric Products* v. *United Electric R & M Workers*, 202 F. 2d 435, 438 (C. A. 2) (dissenting opinion by Judge Clark); Cox, Some Aspects of the Labor Management Relations Act, 1947, 61 Harv. L. Rev. 274, 305 (1948); Gregory, The Collective Bargaining Agreement; Its Nature and Scope, 1 Labor L. J. 451, 456 (1950); Kaye and Allen, Union Responsibility and Enforcement of Collective Bargaining Agreements, 30 Boston U. L. Rev. 1, 22-30 (1950); Warren and Bernstein, A Profile of Labor Arbitration, 4 Indus. and Labor Rel. Rev. 200, 202 (1950).

[8] Labor Management Relations Act of 1947, Sections 201 (c) and 203 (d), 29 U. S. C. Sections 171 (c), 173 (d).

The decision of the district court is reversed and the cause is remanded for proceedings in conformity with this opinion.

A true copy

A. DANIEL FUSARO
Clerk

By RALPH C. CURCIO
Deputy Clerk

Judgment

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 2nd day of July one thousand nine hundred and fifty six.

Present:

HON. CHARLES E. CLARK,
Chief Judge,
HON. JEROME N. FRANK,
HON. STERRY R. WATERMAN,
Circuit Judges.

SIGNAL-STAT CORPORATION,
Plaintiff-Appellee,

v.

LOCAL 475, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE),
Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is reversed and action remanded for proceedings in conformity with the opinion of this Court; with costs to the appellant.

A. DANIEL FUSARO
Clerk

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IN THE

Supreme Court of the United States

October Term, 1956

No. 520

SIGNAL-STAT CORPORATION,

Petitioner,

v.

LOCAL 475, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE),

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

Questions Presented

Three of the four questions presented by petitioner (Questions Two, Three and Four) are inappropriate for review by writ of certiorari. Questions Two and Three present problems neither raised nor decided below. Question Four presents no issue of general application but merely a difference of opinion between petitioner and the court below over the interpretation of a single contract clause in a particular collective bargaining agreement covering approximately 240 employees.

Respondent believes that petitioner's Question One does not reflect adequately the issues presented by the judgment below. That ruling can be supported both by the Arbitration Act and as an appropriate exercise of judicial discretion under the general decisional law. The following questions are presented:

1. May a court, in the exercise of judicial discretion, stay proceedings in an action for breach of contract until the plaintiff has exhausted the procedures for settlement of the dispute which plaintiff itself agreed to in the contract allegedly breached?

2. Whether an action for breach of a collective bargaining agreement fixing generally the terms and conditions of employment of any production employees plaintiff may hire, may be stayed, pursuant to Section 3 of the United States Arbitration Act, where the employees are engaged in the production of goods for commerce and not engaged in commerce.

Statement of the Case

This case involves a dispute between petitioner and respondent as to whether or not an alleged stoppage of production for a two-day period—October 18-20, 1955—was a lockout of the employees by petitioner in breach of its contract or a strike of those employees for which respondent, the employees' collective bargaining representative, was responsible under the contract.

The collective bargaining agreement then in effect between the employer and the union provided for the settlement by arbitration of "all disputes, grievances, or differences" between the parties.[1] It provided generally for the

[1] The grievance-arbitration clause, Section 18, is set forth in full at page 20 of the petition (App. B).

terms and conditions of employment of the employer's production employees but did not specify whom the employer should hire and bound no one to serve the employer (Ex.). Petitioner concedes that the employees involved were not engaged in interstate commerce but merely in the production of goods for commerce (Pet., p. 3).

On October 24, 1955, the employer filed a complaint in the United States District Court for the Eastern District of New York, claiming jurisdiction under Section 301 of the Labor Management Relations Act (28 U. S. C. 185) and alleging that the union was responsible for a work stoppage in breach of contract. On October 27, 1955, the union submitted a grievance under the grievance-arbitration clause, claiming that the events of October 18-20 constituted a lockout by the employer. The employer in turn submitted its contention that those events constituted a strike to the grievance-arbitration procedure.

On November 14, 1955, before answer, the union filed a motion to stay the action pending arbitration. The employer thereupon withdrew from the grievance proceedings and refused to proceed to arbitration to settle the dispute between the parties as to the events of October 18-20, 1955.

The District Court denied the motion for a stay (Pet. App. B, pp. 15-17). Upon appeal, the Court of Appeals for the Second Circuit reversed the lower court (Pet. App. B, pp. 18-28). The Court of Appeals held that the employer's claim and the union's denial of a breach of contract were referable to arbitration under the "broadly inclusive language" of the arbitration agreement. It held further that the remedy of a stay under Section 3 of the United States Arbitration Act was an appropriate one since the contract was not within the exclusions provided by Section 1 of the Act, which excludes contracts of employment of

employees "engaged in" interstate commerce from the coverage of the Act. The Court of Appeals ruled:

> "The plaintiff's employees are not 'engaged in • • • commerce,' that is, they are not actually engaged in interstate and foreign commerce. They are merely engaged in the manufacture of goods for interstate commerce. Therefore, the collective bargaining agreement here does not come within the exclusionary clause of Section 1."

Petitioner requested rehearing which was denied without opinion.[2]

At no time did petitioner raise before the Court of Appeals the contentions it now makes in support of its Questions Two and Three, that the union was in default or had waived its right to arbitration, or that the remedy afforded by Section 301 of the Labor Management Relations Act was inconsistent with the arbitration process.

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[2] In its petition for rehearing in the Court of Appeals, petitioner requested rehearing by a court *en banc*, asserting a "manifest conflict" of opinion between two divisions of the Court (Pet. for Rehearing, p. 14 *ff.*). This alleged conflict lay in a supposed difference between the instant decision holding the dispute referable to arbitration under the arbitration provisions of the contract and the decision in *Markel Electric Products, Inc.* v. *United Electrical, etc.* (CA 2), 202 F. 2d 435, holding that a dispute involving a breach of that contract was not referable to arbitration under the different contractual provisions there involved.

REASONS FOR OPPOSING THE GRANTING OF THE WRIT

I. The ruling below is supported by the general decisional law as an appropriate exercise of judicial discretion. It raises neither an important question nor one involving any conflict of decisions.

Both Federal and State courts have long held it to be a proper exercise of their judicial discretion not to consider issues arising under a contract until the parties have exhausted the contract procedures for settling disputes between them. *Transcontinental & Western Air, Inc.* v. *Koppal,* 345 U. S. 653; *United Protective Workers* v. *Ford Motor Co.* (CA 6, 1952), 194 F. 2d 997, 1001; *Harrison* v. *Pullman Co.* (CA 8, 1934), 68 F. 2d 826; *Post Publishing Co.* v. *Cort,* 1956 Mass. Advance Sheets 41, 134 N. E. 2d 431. In the *Post Publishing Co.* case the Supreme Judicial Court explained the logic of these decisions.

> "We see no occasion to interrupt the normal course of the arbitration procedure voluntarily adopted by the parties themselves. In so doing we venture no statement as to the validity of any award * * *[cases cited]. * * * Parties may raise before an arbitrator a challenge to his jurisdiction, and, without waiving that question may proceed to a hearing on the merits. The arbitrator should decide the jurisdictional question in the first instance, while the right to a judicial determination will be preserved * * * [cases cited]. * * * We see no irreparable injury in first, as promised, carrying out arbitration before the initial tribunal contemplated in the agreement." 134 N. E. 2d, at p. 434.

The policy expressed in these decisions reflects a general policy favoring arbitration as a means of settling disputes, a policy governing Federal Courts since at least 1925 and

the passage of the Arbitration Act. Moreover, this policy is doubly compelling in the instant case since it involves a dispute over the application and interpretation of a labor agreement and the suit is brought under the Labor Management Relations Act. That Act itself affirmatively recognizes arbitration as a desirable means of settling labor disputes. Section 203(d) of the Act (29 U. S. C. 173(d)) declares that:

> "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application and interpretation of an existing collective bargaining agreement."

See also Section 201 of the Act (29 U. S. C. 171).

The ruling of the Court below is thus clearly supportable as a proper exercise of judicial discretion squarely in line with the national policy toward arbitration, particularly in the area of labor disputes. Since the exercise of this power presents no conflict of decisions between the Courts of Appeals, no question appropriate for review by writ of certiorari is presented by the ruling below.[3] Unlike *UE Local 205* v. *General Electric Co.* (CA 1, 1956), 233 F. 2d 85, cert. granted 352 U. S. 822, and *Lincoln Mills of Alabama* v. *Textile Workers Union of America* (CA 5, 1956), 230 F. 2d 81, cert. granted 352 U. S. 821, where the availability of affirmative relief compelling arbitration as a substitute for litigation is in question, affirmance of the ruling below does not necessarily involve consideration of the reach of either the Arbitration Act or Section 301 of the Labor Management Relations Act.

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[3] The decision below is also in line with applicable New York law which favors arbitration of disputes over breach of contract. *Utility Laundry Service* v. *Sklar*, 300 N. Y. 255; *General Footwear Corp.* v. *Lawrence Leather Co.*, 252 N. Y. 577; *Marchant* v. *Mead-Morrison Co.*, 252 N. Y. 284.

II. The decision below correctly applied Section 3 of the Arbitration Act.

Section 3 of the Arbitration Act is applicable to the instant proceeding. The contract here comes within neither of the exceptions set forth in Section 1 of the Act. It is neither a "contract of employment" nor does it cover workers "engaged in" interstate commerce.

The petitioner concedes that the employees here involved are merely engaged in the manufacture of goods, which had not yet entered the channels of commerce. The employees are thus not included within the Congressional exception which is limited to employees actually engaged in those channels.

The conflicts over the meaning and reach of the Commerce Clause are too recent in our historical past to permit the assumption that Congress, when it passed the Arbitration Act in 1925, did not use the phrase "engaged in commerce" as a term of art. The language used by Congress was taken directly from the federal Employers' Liability Act, 45 U. S. C. Ch. 2, etc., and had already received authoritative interpretation by this Court when the Act was passed. As put in *Shanks* v. *D. L. & W. Railroad Co.*, 239 U. S. 556 (1915), the decisive question imported by that phrase is:

> "Was the employee • • • engaged in interstate transportation or in work so closely related to it as to be practically a part of it?" (239 U. S., at p. 558).[4]

This Court has recognized that Congress uses great care and precision in its choice of formulations where

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[4] *Chicago & Northwestern Ry. Co.* v. *Bolle*, 284 U. S. 74 (1931); *Chicago & Eastern Illinois Railroad Co.* v. *Ind. Commr. of Ill.*, 284 U. S. 296 (1932); *N. Y., N. H. & Hartford R. Co.* v. *Bezue*, 284 U. S. 415 (1932), cases arising under the Employers' Liability Act and decided after the passage of the Arbitration Act, show a continued treatment of the phrase "engaged in commerce" as a term of art.

"commerce" is involved. In *McLeod* v. *Threlkeld*, 319 U. S. 491 (1937), the Court said:

> "In drafting legislation under the power granted by the Constitution to regulate interstate commerce and to make all laws necessary and proper to carry those regulations into effect, Congress is faced continually with the difficulty of defining accurately the precise scope of the proposed bill. In the Fair Labor Standards Act, Congress did not intend that the regulation of hours and wages should extend to the furthest reaches of federal authority. The proposal to have the bill apply to employees 'engaged in commerce in any industry affecting commerce' was rejected in favor of the language, now in the act, 'each of his employees who is engaged in commerce or in the production of goods for commerce'.* Sections 6 and 7. See the discussion and reference to legislative history in *A. B. Kirschenbaum Co.* v. *Walling*, 316 U. S. 517, and *Walling* v. *Jacksonville Paper Co.*, No. 336, October Term, 1942 [317 U. S. 564]. The selection of the smaller group was deliberate and purposeful.
>
> "The distinction in the coverage arising from this choice of language was well known to Congress. Cf. National Labor Relations Act, 29 U. S. C. A. § 152. National Labor Relations Bd. v. Jones & L. Steel Corp., 301 U. S. 1; Bituminous Coal Act of [April 26] 1937, 15 U. S. C. A., § 834; Agricultural Adjustment Act [June 3, 1937], 7 U. S. C. A., § 601; Public Utility Holding Company Act of [August 26] 1935, 15 U. S. C. A., § 79a(c)." [Footnote in original.]

The Court below was obviously correct when it refused to read into the Congressional language any more than Congress itself had put there.

Petitioner's argument appears to be that since the border between those "engaged * * * in commerce" and those whose

employment merely affects commerce is not capable of exact *a priori* definition, the distinction is meaningless and should be ignored. The short answer to this is that whether or not petitioner agrees with the wisdom of this distinction, Congress has chosen to make it. The Courts have shown themselves capable of grasping concepts whose shadings are far more subtle.

Collective bargaining agreements are not "contracts of employment" and for that reason also the contract here involved does not come within the limited exception which Section 1 makes to a general Congressional policy favoring arbitration.[5] This Court pointed out in *J. I. Case Co.* v. *NLRB*, 321 U. S. 332, at 334-335, that a collective bargaining agreement differs substantially from a contract of employment. "(N)o one has a job by reason of it and no obligation to any individual ordinarily comes into existence from it alone. The negotations between union and management result in what has often been called a trade agreement rather than in a contract of employment." See also, *Ill. Central Railroad Co.* v. *Moore* (CA 5, 1940), 112 F. 2d 959, 964, rev'd on other grounds 312 U. S. 630. Indeed, at the time of the passage of the Arbitration Act, a collective bargaining agreement was scarcely recognized as a contract at all, much less a contract of employment. *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corporation*, 348 U. S. 437, at p. 455.

The passage of the Arbitration Act signalled a general Congressional policy favoring arbitration. The exception which the Act makes is therefore to be read narrowly and in the light of general Congressional policy. The Report of the Committee on Commerce, Trade and Commercial Law of the American Bar Association (sponsor of the Arbitra-

[5] The court below leaned toward viewing labor agreements as contracts of employment. Its decision on the commerce question made final decision of this question unnecessary.

tion Act at all its stages), 47 ABA Rep. (1923) 287, describes the reason for the exclusion of Section 1 as follows:

> "Objections to the bill were urged by Mr. Andrew Fureseth as representing the Seamen's Union, Mr. Fureseth taking the position that seamen's wages came within admiralty jurisdiction and should not be subject to an agreement to arbitrate. In order to eliminate this opposition, the Committee consented to an amendment of Section 1 as follows: [Section 1 as enacted set forth.]"

Plainly, Mr. Fureseth was not concerned with collective bargaining agreements, where a union would have sufficient strength to insure fairness in the arbitration process. He, and Congress, were concerned with the individual worker who might not only lose the protection of the Admiralty Courts but might be forced into a "yellow dog" contract where any dispute with an employer would be arbitrated before an arbitrator preselected by the employer under an arbitration agreement signed as a condition of hiring. It was the individual employee's contract of employment and not a collective bargaining agreement which the Act exempted from arbitration.

III. The Court below correctly held the dispute referable to arbitration under the contract. The ruling presents no question appropriate for review by writ of certiorari.

The lower court properly ruled that, under a contract which provided for arbitration of "all disputes, grievances, or differences, * * * between the parties to this agreement", the mutual accusations and denials of breach of contract made by the opposing parties here were referable to arbitration. It is difficult to imagine more sweeping contract language, better calculated to require arbitration. Indeed,

as the court below pointed out in its opinion (App. B, p. 23) "The plaintiff itself apparently construed the grievance-arbitration provisions to include this dispute, since it instituted a grievance pursuant to the provisions of Paragraph 18 of the agreement with respect to 'the matter of the quitting of employment by members of the union with the knowledge, consent and direction of the union.'"

Even had the lower court erred in ruling as it did, no issue suitable for review by writ of certiorari would have been created. Mere error in the interpretation of a single contract clause involving only some 240 employees and their employer does not support the issuance of the writ. And the asserted conflict with decisions of other Courts of Appeals is non-existent. Each of the contracts involved in the cases cited by petitioner had its own special language and history. Each case, therefore, insofar as it interprets specific contract language, is undisturbed by the ruling below.

Petitioner argues primarily that there is a conflict in decisions within the Court of Appeals for the Second Circuit itself between the instant case and *Markel Electric Products, Inc.* v. *United Electrical, etc.* (CA 2, 1953), 202 F. 2d 435. This is not correct. The *Markel* arbitration clause, whether read separately or—as the Court of Appeals read it—in the light of the whole contract, differed significantly from the contract clause here, just as all the contracts in the Court of Appeals cases which petitioner cites differed, one from another. The Court of Appeals which decided both the *Signal-Stat* and *Markel* cases did not find difficulty in reconciling its opinions, since it rejected petitioner's request, based upon an alleged conflict of opinion between two divisions of the lower court, for a rehearing *en banc* (Pet. for Rehearing, pp. 14-18).

In any event, a conflict within a Court of Appeals does not ordinarily support the issuance of a writ.

IV. The questions not raised below.

Questions Number Two and Three as presented by the petition were neither raised in the Court of Appeals nor decided by that court. Clearly, then, the decision below cannot stand for any proposition with regard to these questions. In equal measure, the decision provides no ground for the issuance of a writ of certiorari with respect to these questions. Moreover, the questions presented are without merit.

A. There was no union default or waiver of arbitration.

It is hornbook law that waiver is the intentional relinquishment of a known right. The record is completely barren of any showing that the union ever, in any way, surrendered its right to arbitration under the contract. On the contrary, there was a vigorous assertion by the union of the right to arbitration. The record shows that the union instituted its grievance in the grievance- arbitration procedure within the first week after the events underlying this action. It was the employer which refused arbitration of the union grievance. And when the union expressed a willingness to process the employer grievance under the grievance-arbitration clause, it was the employer which refused to proceed with its grievance.

The union, which has consistently pressed for arbitration, can hardly be called "in default in proceeding to arbitration" when the sole obstacle to arbitration has been petitioner's refusal to arbitrate.

Petitioner's real argument appears to be that since the complaint alleges that the union breached the contract, the union has forfeited its right under the contract to have "all grievances and differences" between the petitioner and the union decided by arbitration. But this contention presupposes a determination that the union has breached the agreement, a claim the union vigorously denies. And the

arbitration agreement gives the union the right to have the initial question of breach *vel non* and the legal consequences of that decision decided by an arbitrator in the first instance.

Petitioner's contention would vitiate the entire arbitration process. Arbitrations generally occur only when a breach of contract is claimed and denied. Its purpose is to decide that issue. Petitioner's contention, if accepted, would permit any party to a contract containing an arbitration clause to avoid its agreement to arbitrate breaches of the contract by a simple claim that those same breaches had occurred. This contention has no merit. *In re Pahlberg Petition* (CA 2, 1942), 131 F. 2d 968; *Shanferoke Coal and Supply Co.* v. *Westchester Service Corp.* (CA 2, 1934), 70 F. 2d 297; *Kulukundis Shipping Co.* v. *Amtorg Trading Corp.* (CA 2, 1942), 126 F. 2d 978; *Hudson Wholesale Grocery Co.* v. *Allied Trades Council,* 3 N. J. Super. 327, 67 A 2d 557.

B. The arbitration process is not inconsistent with Section 301 of the Labor Management Relations Act.

Petitioner appears to contend (p. 10) that in some way rights established by Section 301 will be lost if plaintiffs must first live up to their agreements to arbitrate before seeking judicial relief. It is difficult to conceive of any basis for this contention. Arbitrators have proven themselves perfectly capable of deciding breach of contract issues. Congress recognized this thirty years ago when it passed the Arbitration Act. It is probably due in large measure to the ability of the professional arbitrator to decide contract issues that the present system of industrial government based upon collective bargaining agreements is able to exist in its present stable form.

Only if petitioner's underlying presumption of hostility to the arbitration process be accepted, does its contention that arbitration destroys rights under Section 301 become

meaningful. But the traditional judicial hostility towards arbitration has long been replaced by a favorable attitude. The very Congress which enacted Section 301, in the same breath, declared itself in favor of the arbitration of industrial disputes. No hostility exists between the desire of Congress that labor agreements should be observed and the requirement that arbitration clauses in labor contracts should be respected.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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